



***Town of Tyngsborough***  
***Planning Board***  
25 Bryants Lane,  
Tyngsborough, Massachusetts 01879-1003  
Office: (978) 649-2300 ext. 115

MINUTES  
February 21, 2013  
**APPROVED**

Attachments:

1. Meeting Agenda
2. 30 Progress Ave. Application for Special Permit – 1/17/2013
3. David E. Ross Associates Site Plan Review for 30 Progress Ave. – 2/18/13
4. Department Comments for 30 Progress Ave.
5. ANR Application for 21 Davis Rd. – 2/12/13
6. Walter E. Chambers Letter and ANR Application for 35 Davis Street – 4/6/12
7. Planning Board Letter Regarding 35 Davis Street ANR – 6/6/12
8. ANR Application and Plan of Land for 347 Middlesex Rd. – 2/2/13
9. Land Engineering & Environmental Services Letter for 81 Westford Rd. – 1/28/13
10. Layout Modification Plan for 81 Westford Rd. – 1/28/13
11. Grading & Roof Recharge Modification Plan for 81 Westford Rd. – 1/28/13

Members Present: Tom Delmore, Chairman  
Bill Gramer, Vice Chairman  
Steve Nocco  
Caryn DeCarteret  
Steve O'Neill  
Steve Berthiaume (Associate Member)

**7:00pm -** Meeting called to order by Chairman Tom Delmore

**7:02pm**      **21 Davis Road ANR Application** – Patricia Stepinski

Attorney Kevin Eriksen appeared before the Board for Ms. Stepinski who wishes to subdivide her existing lot into two separate lots. There is a total land area of 26 acres and she wishes to create 1 new lot to sell, and keep the remaining 24 acres in her name. Board engineer J. Johnson reviewed the plan for compliance and reported that it meets all of the criteria and can be endorsed. The Board signed the mylar plan.

**W. Gramer:** Motion to endorse the Approval Not Required Plan of Land titled 21 Davis Road Tyngsborough MA prepared for Patricia Stepinski dated February 11, 2013.

**S. Nocco:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

**7:10pm**      **30 Progress Ave. (Logan Realty Trust dba, N.E. Transit)** – Amend existing Special Permit to construct ~39,000 s.f. of additional paved parking area to augment the existing paved bus storage.

**S. Nocco:** Motion to waive the reading of the abutters list and legal notice

**C. DeCarteret:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

Atty. Kevin Eriksen appeared before the Board for the applicant George Logan of N.E. Transit. In 2009, the business received a Special Permit for an addition to the existing building with conditions that prohibited the use of the abutting gravel lot for bus parking. Since then, the business has improved and Mr. Logan wishes to expand the bus parking to this abutting lot. The paved expansion will help alleviate overcrowding of the bus inventory. There will be no lighting installed at this time and the required Stormwater Management filing with Conservation is currently scheduled for a hearing on February 26, 2013.

Board engineer J. Johnson reviewed the plans and noted that all suggested revisions were made. The Board voiced major concerns with issues related to the applicant's history of non-compliance with the existing Special Permit conditions. In addition, the Building Commissioner submitted visual proof that large piles of old asphalt are currently being stored on the gravel lot. He strongly suggested that the removal of this debris be a condition to any modification to the Special Permit, in order to avoid the possibility of burying it. The Board went on to say that a specific date of completion would need to be established in order for them to consider any modification. Atty. Eriksen asked for a brief recess in order to contact his client for comment as he was not present at the hearing.

**7:25pm**      **S. Nocco:** Motion for a 5 minute recess in order for Atty. Eriksen to contact his client for answers to the Board's questions.

**T. Delmore:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

**7:30pm**      **C. DeCarteret:** Motion to come back into session for 30 Progress Ave.

**S. Nocco:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

Atty. Eriksen reported that Mr. Logan would be willing to set a completion date of July 30, 2013, but offered to amend the date to June 30, 2013 after the Board stated that this was not a realistic good faith finish date. In addition, Atty. Eriksen said that by the June 6, 2013 Planning Board meeting, his client should know if they will require additional time to complete the project and will address the Board at that time to update them. Finally, the piles of asphalt will be removed by June 1, 2013 and the Board's engineer could conduct frequent inspections during the course

of construction. All of these concessions can be conditioned on the special permit. The Board was satisfied with this response. There were no abutters present to speak on this project.

**S. Nocco:** Motion to close the public portion of the hearing.

**W. Gramer:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

**W. Gramer:** Motion to approve an amendment to the existing Special Permit for 30 Progress Ave. for the construction of 39,000 s.f. of an additional paved parking area to augment the existing paved bus storage. Such permit is conditioned on the following:

In accordance with Section 1.16.14 of the Zoning By-law the Planning Board finds that this proposed use:

1. Is in harmony with the purpose and intent of this By-law;
2. Will not be detrimental or injurious to the neighborhood in which it is to take place;
3. Is appropriate for the site in question;
4. Complies with all applicable requirements of this By-law.
5. The Board's decision is conditioned on the following:
  - a. An as-built plan and certification by the Board's engineer regarding its completion is required.
  - b. Project is to be completed by June 30, 2013.
  - c. Applicant will appear at the June 6, 2013 Planning Board meeting to discuss the status of the project, at which time the Planning Board reserves the right to impose further inspections of which costs incurred from these inspections will be paid by the Applicant.
  - d. Existing piles of asphalt hot top must be completely removed from the site by June 1, 2013.

**S. Nocco:** 2<sup>nd</sup> the motion

**Roll Call Vote:**

**Steve Nocco:** Yes

**William Gramer:** Yes

**Tom Delmore:** Yes

**Steve O'Neill:** Yes

**Caryn DeCarteret:** Yes

**Passes: 5-0**

**7:50pm      35 Davis Street ANR Application – Frank & Patricia Berry, cont. from 3/3/2011**

Atty. Walter Chambers appeared before the Board for his clients who wish to subdivide their property into 3 lots. After the March 3, 2011 meeting, the plans were revised based on the suggestions of the Board and engineer J. Johnson who has reviewed them and reported that they now meet all of the requirements. The mylar plan was not available for the Board to sign.

**S. O'Neill:** Motion to endorse the Approval Not Required Plan of Land for 35 Davis Street prepared for Frank & Patricia Berry and revised October 27, 2011.

**S. Nocco:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

**7:55pm      347 Middlesex Road ANR Application – Jody Dupuis**

Atty. Peter Nicosia and engineer Doug Lees appeared before the Board for the applicant. This property is an 11 acre parcel that currently is home to Tyngsborough Gardens. The owner wishes to subdivide the entire property into 4 lots that will eventually be further developed. It is a B-3 Zone that would require a site plan review by the Planning Board for any development, but for now, the owner has no current plans for development. J. Johnson reviewed the plans and reported that they meet all of the ANR requirements. The Board read a letter into the record from the Tax Collector's office that indicates that there are outstanding Personal Property taxes due in the amount of \$328.13 and outstanding Real Estates Taxes due in the amount of \$6,046.50. Atty. Nicosia stated that all taxes will be paid in connection with any sale of the property. The mylar plan was signed by the Board.

**S. O'Neill:** Motion to endorse the Approval Not Required Plan of Land for 347 Middlesex Road prepared for Jody Dupuis and dated February 2, 2013.

**S. Nocco:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

**8:00pm      81 Westford Rd. – Request for modification of existing Special Permit**

Atty. Nicosia appeared before the Board with owner Frank Polak and engineer Doug Lees. The original Special Permit allows for 2 buildings, a Honey Dew Donuts, and a bank with a drive-thru lane. The owner has found a tenant for the second building and is under agreement with a national daycare facility that will inhabit the building. In order to facilitate that use, modifications are needed on the site plan, most notably, removing the drive-thru lane. Board engineer J. Johnson reported that several issues would need to be looked at, including loading zones, parking, snow storage, dumpster access, and the pick-up and drop-off of children. The Board had numerous questions regarding the operation of the daycare and Atty. Nicosia felt that more time was needed to work on the specifics of the new plans and get answers to the Board's questions.

**S. O'Neill:** Motion to continue this discussion until March 7, 2013.

**S. Nocco:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

## **DISCUSSION**

### **1. Rules for Special Permit Applications**

The Board discussed modifying the current procedure for submitting new applications for Special Permits to the Board. Discussed a new procedure would eliminate the need for applicants to submit their applications at a regularly scheduled meeting. Applicants will be able to submit applications to the Planning Board Administrative Assistant during regular business hours. The Administrative Assistant will review the application for completeness and schedule the public hearing at that time. The Board felt that this procedure would be more time efficient for all parties.

**S. O'Neill:** Motion to allow applicants to submit their applications to the Planning Board Administrative Assistant during regular office hours.

**S. Nocco:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed; 0**

**Passes: 5-0**

### **2. Evergreen Estates Surety Bond Update**

Administrative Assistant P. Berman updated the Board as to the status of obtaining the surety bond for this subdivision. Town Counsel is in the process of filing a declaratory judgment on the Evergreen Estates parties in order to obtain the money.

### **3. Zoning By-Law Amendments**

The Board decided on Zoning By-Law amendments to be put on the annual town meeting in May 2013. They are the following: Section 2.11.44, Section 2.11.50, Section 2.15.23, Section 4.11.30, and Section 4.15.30.

## **ADMINISTRATIVE**

**S. O'Neill:** Motion to approve the minutes from December 17, 2012 as written.

**W. Gramer:** 2<sup>nd</sup> the motion

**In Favor: 4 Opposed: 0 Abstain: 1**

**Passes: 4-0-1**

**S. Nocco:** Motion to approve the minutes from January 3, 2013 as written.

**C. DeCarteret:** 2<sup>nd</sup> the motion

**In Favor: 3 Opposed: 0 Abstain: 2**

**Passes: 3-0-2**

**S. Nocco:** Motion to approve the minutes from January 7, 2013 as written.

**C. DeCarteret:** 2<sup>nd</sup> the motion

**In Favor: 3 Opposed: 0 Abstain: 2**

**Passes: 3-0-2**

**S. O'Neill:** Motion to approve the minutes from February 7, 2013 as written.

**S. Nocco:** 2<sup>nd</sup> the motion

**In Favor: 3 Opposed: 0 Absent: 2**

**Passes: 3-0-2**

**8:50pm**

**S. O'Neill:** Motion to adjourn

**C. DeCarteret:** 2<sup>nd</sup> the motion

**In Favor: 5 Opposed: 0**

**Passes: 5-0**

Minutes respectfully submitted by  
Pamela Berman, Planning Board Administrative Assistant